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Justice Courts. Eligibility.

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Official Title and Summary Prepared by the Attorney General

JUSTICE COURTS. ELIGIBILITY. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Amends the State Constitution to provide that justice courts are courts of record and that a person is ineligible to be a justice court judge unless the person has been a member of the State Bar or served as a judge of a court of record in California for five years immediately preceding selection. Makes changes operative on January 1, 1990. Exempts justice court judges who held office on January 1, 1988, from the 5-year membership or service requirement. Makes exemption operative only until January 1, 1995. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: By itself, this measure would have no fiscal effect, but would depend on actions taken by the Legislature to implement it. The counties affected by the measure would have costs or savings to the extent that legislative changes in the salaries and/or retirement benefits of justice court judges would differ from those the counties would otherwise have made.

Final Vote Cast by the Legislature on ACA 12 (Proposition 91)

Assembly: Ayes 73
Noes 0

Senate: Ayes 30
Noes 0

Analysis by the Legislative Analyst

Background

The California state court system consists of courts on five levels: the Supreme Court, the courts of appeal, superior courts, municipal courts, and justice courts. All except justice courts are "courts of record." The judgments of courts of record are enforceable in other states. The Legislature sets the salary and retirement benefits of these judges.

There are 76 justice courts in 33 counties in California. Justice courts are established in districts with populations of less than 40,000 and share jurisdiction with municipal courts. Under current law, the board of supervisors in each county determines the operations of the justice courts, including the composition of the court staff. Counties also determine and pay the salaries and retirement benefits of justice court judges.

In order to become a justice court judge, a person must be an attorney and a member of the State Bar of California. Most justice court judges serve on a part-time basis.

Proposal

This constitutional amendment designates justice courts as courts of record. As a result, the Legislature would set the salaries and retirement benefits of these judges. Responsibility for the payment of these costs would remain with the counties. The measure also requires that justice court judges be attorneys and members of the State Bar for at least five years before they become judges. The measure would take effect January 1, 1990. The requirement that these judges be attorneys and members of the State Bar for five years would not apply to those who held office on January 1, 1988.

Fiscal Effect

By itself, this measure would have no direct fiscal effect, but would depend on actions taken by the Legislature to implement it. The counties affected by the measure would have costs or savings to the extent that legislative changes in the salaries and/or retirement benefits of justice court judges would differ from those the counties would otherwise have made.

Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 12 (Statutes of 1988, Resolution Chapter 65) expressly amends the Constitution by amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLE VI, SECTIONS 1, 15 AND 15.5

First—That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. All ~~except justice~~ courts are courts of record.

Second—That Section 15 of Article VI thereof is amended to read:

SEC. 15. A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to a municipal *or justice* court or 10 years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge of a court of record in this State. A judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court.

Third—That Section 15.5 is added to Article VI thereof, to read:

SEC. 15.5. The 5-year membership or service requirement of Section 15 does not apply to justice court judges who held office on January 1, 1988.

This section shall be operative only until January 1, 1995, and as of that date is repealed.

Fourth—That the changes made by this measure shall be operative on January 1, 1990.

Argument in Favor of Proposition 91

Proposition 91 would amend the State Constitution to: (1) declare justice courts to be courts of record, (2) require justice court judges to have the same minimum experience as municipal court judges, and (3) prohibit justice court judges from practicing law.

California's judicial power is vested in the Supreme Court, courts of appeal, superior, municipal and justice courts. With the exception of justice courts, all courts are courts of record. This designation means that orders and judgments of those courts are fully respected and enforced outside the state and within the federal court system. Not so for justice courts.

Many small, less populated counties are served by justice courts rather than by municipal courts. The types of cases heard by and the jurisdiction of justice courts are the same as municipal courts. But the absence of a designation as a court of record prevents justice courts from dealing with several types of matters such as federal search and arrest warrants and extraditions from other states. Yet, these matters all may be dealt with in municipal courts.

In counties with a justice court but no municipal court,

the lack of a designation as a court of record has a serious impact on the disposition of some cases. Residents in these counties suffer legal shortcomings not faced by residents in larger counties. Proposition 91 eliminates these inequities by affording all California residents equal treatment within our court system.

To assure a basic level of judicial competency and commitment, Proposition 91 also requires justice court judges to have the same minimum experience and qualifications as municipal court judges. Existing law prohibits judges of courts of record from practicing law. Proposition 91 would include justice court judges in that prohibition.

Approval of Proposition 91 would provide all California residents with the same level of judicial and law enforcement services from our court system.

We respectfully ask you to vote yes on Proposition 91.

LARRY STIRLING

Member of the Assembly, 77th District

V. GENE McDONALD

President, California Judges Association

P. TERRY ANDERLINI

President, State Bar of California

Rebuttal to Argument in Favor of Proposition 91

If Proposition 91 only made justice courts "courts of record," it would be acceptable.

Justice court judges should not be allowed to practice law on the side. It is not clear, however, that this is a problem anywhere in the state.

The heart of Proposition 91, therefore, appears to be the requirement that justice court judges have at least 5 years of experience in the legal profession.

This requirement unduly restricts the Governor and local voters (when there is a contest for a judgeship) in selecting persons to serve as justice court judges on the basis of such factors as integrity, temperament, work habits, fairness, judicial philosophy as well as knowledge

of the law and a willingness to learn.

I write ballot arguments to make sure voters receive arguments on both sides. This November 8, California voters face a long list of ballot measures and will be choosing candidates for high public office.

It is not easy to decide all of these matters. But the right to decide is largely what separates our great nation from the dictatorships and totalitarian governments around the world.

Let's not let others decide for us. On November 8, please be sure to VOTE.

GARY B. WESLEY

Attorney at Law

Argument Against Proposition 91

Proposition 91 is a proposal by the Legislature to amend our State Constitution to require that judges of "justice courts" have at least 5 years of experience as attorneys before becoming judges.

As a general rule, 5 years of experience is not enough. Judges of justice courts perform vital functions, including hearing evidence at the initial stage of a complex, death-penalty murder case. Such judges should ordinarily have far more than 5 years of experience in the practice of law.

On the other hand, our Constitution provides that judges of the municipal court need only 5 years of experience and judges of higher courts, including the California Supreme Court, need only 10 years of experience.

Both former Governor Jerry Brown and current Governor George Deukmejian appointed many attorneys to the bench who had barely more than the minimum period of experience required under our Constitution. Surely, a high percentage of these appointees have proven to be capable judges.

The point is that, while experience is important, there is no minimum period of experience that gives voters any significant assurance that an attorney will make a good judge.

The current requirement that judges of courts (other

than justice court) have a minimum period of experience brings to mind provisions of the United States Constitution written two centuries ago which require that the President be a "natural-born citizen" and at least 35 years of age before taking office (*United States Constitution, Article II, Section 1, subsection 5*).

Ted Koppel of ABC's "Nightline" was not born in this country; perennial presidential candidate Lyndon LaRouche evidently was born in the United States. Does that mean that Mr. LaRouche would necessarily be a better President than Ted Koppel? I hope the question answers itself.

With regard to judgeships, the Governor and voters should be free to make their own assessment of each candidate's qualifications without well-intentioned but misguided restrictions.

Our State Constitution should not require a minimum period of experience for any judicial office. A "no" vote on Proposition 91 at least ensures that the error of requiring a minimum period of experience is not extended to candidates for the lowest of California's courts—the justice court.

GARY B. WESLEY
Attorney at Law

Rebuttal to Argument Against Proposition 91

The argument against Proposition 91 misses the point.

The main purpose of this proposition is to establish justice courts as courts of record. The argument against its passage fails to address this basic fact. Without the approval of Proposition 91, justice courts will continue to be treated differently from all other California courts. Today, orders and judgments from our justice courts are not always fully respected and enforced outside the state and within the federal court system. Proposition 91 solves that problem by declaring all justice courts to be courts of record.

The argument against Proposition 91 fails to mention another important fact. Today, justice court judges are allowed to practice law on a limited basis. Proposition 91 would remedy that situation by including those judges under provisions which prohibit judges of courts of record from practicing law.

The argument against Proposition 91 expresses opposi-

tion to the requirement that justice court judges have the same minimum experience as municipal court judges. The opponent argues that "our State Constitution should not require a minimum period of experience for any judicial office." We disagree. Californians deserve a basic level of competency and commitment from their judges, and Proposition 91 extends that requirement to justice court judges as well.

Please improve our judicial system. Require a minimum level of qualifications and experience before anyone may become a judge and prohibit justice court judges from practicing law.

Vote "yes" on Proposition 91.

LARRY STIRLING
Member of the Assembly, 77th District
V. GENE McDONALD
President, California Judges Association
P. TERRY ANDERLINI
President, State Bar of California